

1-1 By: Flynn, et al. (Senate Sponsor - Nichols) H.B. No. 1535
 1-2 (In the Senate - Received from the House April 23, 2019;
 1-3 April 24, 2019, read first time and referred to Committee on
 1-4 Business & Commerce; May 9, 2019, reported adversely, with
 1-5 favorable Committee Substitute by the following vote: Yeas 8,
 1-6 Nays 0; May 9, 2019, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16			X	
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 1535 By: Nichols

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the continuation and functions of the State Securities
 1-22 Board.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Subsections J and O, Section 2, The Securities
 1-25 Act (Article 581-2, Vernon's Texas Civil Statutes), are amended to
 1-26 read as follows:

1-27 J. On or before January 1 of each year, the Board, with the
 1-28 advice of the Commissioner, shall report to the Governor and the
 1-29 presiding officer of each house of the Legislature as to its
 1-30 administration of this Act, as well as plans and needs for future
 1-31 securities regulation. The report must include:

1-32 (1) a detailed accounting of all funds received and
 1-33 disbursed by the Board during the preceding year, including the
 1-34 amount spent by the Board assisting in the criminal prosecution of
 1-35 cases under Subsection B of Section 3 of this Act; and

1-36 (2) with respect to cases referred during the
 1-37 preceding year by the Board under Subsection A of Section 3 of this
 1-38 Act, a breakdown by county and district attorney of the number of
 1-39 cases where:

1-40 (A) criminal charges were filed;

1-41 (B) prosecution is ongoing; or

1-42 (C) prosecution was completed.

1-43 O. The State Securities Board is subject to Chapter 325,
 1-44 Government Code (Texas Sunset Act). Unless continued in existence
 1-45 as provided by that chapter, the board is abolished and this Act
 1-46 expires September 1, 2031 [2019].

1-47 SECTION 2. Section 2-3, The Securities Act (Article
 1-48 581-2-3, Vernon's Texas Civil Statutes), is amended by amending
 1-49 Subsection B and adding Subsection D to read as follows:

1-50 B. The training program must provide the person with
 1-51 information regarding:

1-52 (1) the law governing [~~legislation that created the~~]
 1-53 Board operations;

1-54 (2) the programs, [~~operated by the Board,~~
 1-55 [~~(3) the role and~~] functions, rules, and budget of the
 1-56 Board;

1-57 (3) the scope of and limitations on the rulemaking
 1-58 authority [~~(4) the rules~~] of the Board [~~with an emphasis on the~~
 1-59 rules that relate to disciplinary and investigatory authority];

1-60 (4) the types of Board rules, interpretations, and

2-1 enforcement actions that may implicate federal antitrust law by
2-2 limiting competition or impacting prices charged by persons engaged
2-3 in a profession or business the Board regulates, including any
2-4 rule, interpretation, or enforcement action that:

2-5 (A) regulates the scope of practice of persons in
2-6 a profession or business the Board regulates;

2-7 (B) restricts advertising by persons in a
2-8 profession or business the Board regulates;

2-9 (C) affects the price of goods or services
2-10 provided by persons in a profession or business the Board
2-11 regulates; or

2-12 (D) restricts participation in a profession or
2-13 business the Board regulates;

2-14 (5) ~~[the current budget for the Board,~~
2-15 ~~[(6)] the results of the most recent formal audit of~~
2-16 ~~the Board;~~

2-17 (6) ~~[(7)] the requirements of:~~

2-18 (A) laws relating to [the] open meetings, [law,
2-19 Chapter 551, Government Code,

2-20 ~~[(B) the] public information [law], [Chapter~~
2-21 ~~552, Government Code,~~

2-22 ~~[(C) the] administrative procedure [law],~~
2-23 ~~[Chapter 2001, Government Code,] and disclosing~~
2-24 ~~conflicts-of-interest; and~~

2-25 (B) ~~[(D)] other laws applicable [relating] to~~
2-26 ~~members of a state policymaking body in performing their duties~~
2-27 ~~[public officials, including conflict-of-interest laws]; and~~

2-28 (7) ~~[(8)] any applicable ethics policies adopted by~~
2-29 ~~the Board or the Texas Ethics Commission.~~

2-30 D. The Commissioner shall create a training manual that
2-31 includes the information required by Subsection B of this section.
2-32 The Commissioner shall distribute a copy of the training manual
2-33 annually to each member of the Board. Each member of the Board
2-34 shall sign and submit to the Commissioner a statement acknowledging
2-35 that the member received and has reviewed the training manual.

2-36 SECTION 3. Section 2-6, The Securities Act (Article
2-37 581-2-6, Vernon's Texas Civil Statutes), is amended to read as
2-38 follows:

2-39 Art. 581-2-6. COMPLAINTS INFORMATION. A. The
2-40 Commissioner or the Commissioner's designee shall maintain a system
2-41 to promptly and efficiently act ~~[file]~~ on complaints ~~[each written~~
2-42 ~~complaint]~~ filed with the Commissioner or Board. The Commissioner
2-43 or the Commissioner's designee shall maintain information about
2-44 parties to the complaint, the subject matter of the complaint, a
2-45 summary of the results of the review or investigation of the
2-46 complaint, and its disposition [concerning an employee, former
2-47 employee, or person registered under this Act. The file must
2-48 include:

2-49 ~~[(1) the name of the person who filed the complaint,~~

2-50 ~~[(2) the date the complaint is received by the~~
2-51 ~~Commissioner or Board,~~

2-52 ~~[(3) the subject matter of the complaint,~~

2-53 ~~[(4) the name of each person contacted in relation to~~
2-54 ~~the complaint,~~

2-55 ~~[(5) a summary of the results of the review or~~
2-56 ~~investigation of the complaint, and~~

2-57 ~~[(6) an explanation of the reason the file was closed,~~
2-58 ~~if the Commissioner closed the file without taking action other~~
2-59 ~~than to investigate the complaint].~~

2-60 B. The Commissioner or the Commissioner's designee shall
2-61 make information available describing [provide to the person filing
2-62 the complaint and to each person who is a subject of the complaint a
2-63 copy of] the Board's [policies and] procedures for [relating to]
2-64 complaint investigation and resolution.

2-65 C. The Commissioner or the Commissioner's designee [at
2-66 least quarterly until final disposition of the complaint,] shall
2-67 periodically notify the [person filing the] complaint parties [and
2-68 each person who is a subject of the complaint] of the status of the
2-69 complaint until final disposition [investigation] unless the

3-1 notice would jeopardize a law enforcement [~~an undercover~~]
3-2 investigation.

3-3 SECTION 4. The Securities Act (Article 581-1 et seq.,
3-4 Vernon's Texas Civil Statutes) is amended by adding Section 2-8 to
3-5 read as follows:

3-6 Sec. 2-8. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION.

3-7 A. The Board shall develop a policy to encourage the use of:

3-8 (1) negotiated rulemaking procedures under Chapter
3-9 2008, Government Code, for the adoption of Board rules; and

3-10 (2) appropriate alternative dispute resolution
3-11 procedures under Chapter 2009, Government Code, to assist in the
3-12 resolution of internal and external disputes under the Board's
3-13 jurisdiction.

3-14 B. The Board's procedures relating to alternative dispute
3-15 resolution must conform, to the extent possible, to any model
3-16 guidelines issued by the State Office of Administrative Hearings
3-17 for the use of alternative dispute resolution by state agencies.

3-18 C. The Board shall:

3-19 (1) coordinate the implementation of the policy
3-20 adopted under Subsection A of this section;

3-21 (2) provide training as needed to implement the
3-22 procedures for negotiated rulemaking or alternative dispute
3-23 resolution; and

3-24 (3) collect data concerning the effectiveness of those
3-25 procedures.

3-26 SECTION 5. Section 3, The Securities Act (Article 581-3,
3-27 Vernon's Texas Civil Statutes), is amended to read as follows:

3-28 Art. 581-3. ADMINISTRATION AND ENFORCEMENT BY THE
3-29 SECURITIES COMMISSIONER AND THE ATTORNEY GENERAL AND LOCAL LAW
3-30 ENFORCEMENT OFFICIALS. A. The administration of the provisions of
3-31 this Act shall be vested in the Securities Commissioner. It shall
3-32 be the duty of the Securities Commissioner and the Attorney General
3-33 to see that its provisions are at all times obeyed and to take such
3-34 measures and to make such investigations as will prevent or detect
3-35 the violation of any provision thereof. The Commissioner shall at
3-36 once lay before the District or County Attorney of the proper county
3-37 any evidence which shall come to his knowledge of criminality under
3-38 this Act. In the event of the neglect or refusal of such attorney to
3-39 institute and prosecute such violation, the Commissioner shall
3-40 submit such evidence to the Attorney General, who is hereby
3-41 authorized to proceed therein with all the rights, privileges and
3-42 powers conferred by law upon district or county attorneys,
3-43 including the power to appear before grand juries and to
3-44 interrogate witnesses before such grand juries.

3-45 B. Subject to Subsection E of this section, the Board may
3-46 provide assistance to a county or district attorney who requests
3-47 assistance in a criminal prosecution involving an alleged violation
3-48 of this Act that is referred by the Board to the attorney under
3-49 Subsection A of this section.

3-50 C. Before referring a case to a county or district attorney
3-51 for prosecution as required by Subsection A of this section, the
3-52 Commissioner shall make a determination of:

3-53 (1) the potential resources of the Board, including
3-54 the number and types of Board employees, that would be needed to
3-55 assist in the prosecution of the case; and

3-56 (2) the availability of Board employees and other
3-57 resources necessary to carry out any request for assistance.

3-58 D. The Board by rule shall establish a process to enable the
3-59 Commissioner to determine whether to provide any requested
3-60 assistance to the appropriate prosecuting attorney following
3-61 referral of a case under Subsection A of this section and, if so,
3-62 the appropriate amount of such assistance. The rules must require
3-63 the Commissioner to consider:

3-64 (1) whether resources are available after taking into
3-65 account any ongoing Board investigations, investigations under
3-66 Section 28 of this Act, and criminal prosecutions for which
3-67 assistance is being provided;

3-68 (2) the seriousness of the alleged violation or
3-69 violations in the case, including the severity of the harm and

4-1 number of victims involved; and
 4-2 (3) the state's interest in the prosecution of a
 4-3 particular case and the availability of other methods of redress
 4-4 for the alleged violations, including the pursuit of a civil
 4-5 action.

4-6 E. In response to a request for assistance under Subsection
 4-7 B of this section, the Board may provide only those Board employees
 4-8 or resources, if any, determined to be available for that case in
 4-9 accordance with Subsection C of this section. If a change in
 4-10 circumstances occurs after the time of the determination under
 4-11 Subsection C of this section, the Commissioner may reconsider the
 4-12 Commissioner's determination under that subsection and may
 4-13 increase or reduce the number of Board employees or other resources
 4-14 to be made available for a case using the process established under
 4-15 Subsection D of this section.

4-16 F. The Attorney General, at least biennially, shall review a
 4-17 sample of criminal cases for which the Board provided requested
 4-18 assistance to county or district attorneys under this section. The
 4-19 review must include an evaluation of the pre-referral determination
 4-20 of available resources to support each case being reviewed as
 4-21 required by Subsection C of this section and any subsequent
 4-22 determination of those resources made by the Commissioner as
 4-23 authorized under Subsection E of this section. The Attorney
 4-24 General may report any concerns the Attorney General has in
 4-25 connection with the Board's provision of assistance to the standing
 4-26 committee of each house of the legislature with primary
 4-27 jurisdiction over Board matters.

4-28 SECTION 6. The Securities Act (Article 581-1 et seq.,
 4-29 Vernon's Texas Civil Statutes) is amended by adding Section 32-1 to
 4-30 read as follows:

4-31 Sec. 32-1. REFUND. A. Subject to Subsection B of this
 4-32 section, the Commissioner may order a dealer, agent, investment
 4-33 adviser, or investment adviser representative regulated under this
 4-34 Act to pay a refund to a client or a purchaser of securities or
 4-35 services from the person or company as provided in an agreed order
 4-36 or an enforcement order instead of or in addition to imposing an
 4-37 administrative penalty or other sanctions.

4-38 B. The amount of a refund ordered as provided in an agreed
 4-39 order or an enforcement order may not exceed the amount the client
 4-40 or purchaser paid to the dealer, agent, investment adviser, or
 4-41 investment adviser representative for a service or transaction
 4-42 regulated by the Board. The Commissioner may not require payment of
 4-43 other damages or estimate harm in a refund order.

4-44 SECTION 7. Subsection B, Section 35, The Securities Act
 4-45 (Article 581-35, Vernon's Texas Civil Statutes), is amended to read
 4-46 as follows:

4-47 B. The Commissioner or Board shall charge and collect the
 4-48 following fees and shall daily pay all fees received into the State
 4-49 Treasury:

4-50 (1) for any filing to amend the registration
 4-51 certificate of a dealer or investment adviser or evidence of
 4-52 registration of an agent or investment adviser representative, or
 4-53 issue a duplicate certificate or evidence of registration, [~~or~~
 4-54 ~~register a branch office,~~] \$25;

4-55 (2) for the examination of any original or amended
 4-56 application filed under Subsection A, B, or C of Section 7 of this
 4-57 Act, regardless of whether the application is denied, abandoned,
 4-58 withdrawn, or approved, a fee of one-tenth (1/10) of one percent
 4-59 (1%) of the aggregate amount of securities described and proposed
 4-60 to be sold to persons located within this state based upon the price
 4-61 at which such securities are to be offered to the public;

4-62 (3) for certified copies of any papers filed in the
 4-63 office of the Commissioner, the Commissioner shall charge such fees
 4-64 as are reasonably related to costs; however, in no event shall such
 4-65 fees be more than those which the Secretary of State is authorized
 4-66 to charge in similar cases;

4-67 (4) for the filing of any application for approval of a
 4-68 stock exchange so that securities fully listed thereon will be
 4-69 exempt, a fee of \$10,000;

5-1 (5) for the filing of a request to take the Texas
5-2 Securities Law Examination, \$35;

5-3 (6) for the filing of an initial notice required by the
5-4 Commissioner to claim a secondary trading exemption, a fee of \$500,
5-5 and for the filing of a secondary trading exemption renewal notice,
5-6 a fee of \$500;

5-7 (7) for the filing of an initial notice required by the
5-8 Commissioner to claim a limited offering exemption, a fee of
5-9 one-tenth (1/10) of one percent (1%) of the aggregate amount of
5-10 securities described as being offered for sale, but in no case more
5-11 than \$500; and

5-12 (8) for an interpretation by the Board's general
5-13 counsel of this Act or a rule adopted under this Act, a fee of \$100,
5-14 except that an officer or employee of a governmental entity and the
5-15 entity that the officer or employee represents are exempt from the
5-16 fee under this subsection when the officer or employee is
5-17 conducting official business of the entity.

5-18 SECTION 8. (a) Except as provided by Subsection (b) of this
5-19 section, Section 2-3, The Securities Act (Article 581-2-3, Vernon's
5-20 Texas Civil Statutes), as amended by this Act, applies to a member
5-21 of the State Securities Board appointed before, on, or after the
5-22 effective date of this Act.

5-23 (b) A member of the State Securities Board who, before the
5-24 effective date of this Act, completed the training program required
5-25 by Section 2-3, The Securities Act (Article 581-2-3, Vernon's Texas
5-26 Civil Statutes), as that law existed before the effective date of
5-27 this Act, is required to complete additional training only on
5-28 subjects added by this Act to the training program as required by
5-29 Section 2-3, The Securities Act (Article 581-2-3, Vernon's Texas
5-30 Civil Statutes), as amended by this Act. A board member described
5-31 by this subsection may not vote, deliberate, or be counted as a
5-32 member in attendance at a meeting of the board held on or after
5-33 December 1, 2019, until the member completes the additional
5-34 training.

5-35 SECTION 9. Subsection A, Section 2-6, The Securities Act,
5-36 (Article 581-2-6, Vernon's Texas Civil Statutes), as amended by
5-37 this Act, applies only to a complaint filed with the State
5-38 Securities Board on or after the effective date of this Act. A
5-39 complaint filed before the effective date of this Act is governed by
5-40 the law in effect on the date the complaint was filed, and the
5-41 former law is continued in effect for that purpose.

5-42 SECTION 10. Not later than March 1, 2020, the State
5-43 Securities Board shall adopt rules necessary to implement the
5-44 changes in law made by this Act to Section 3, The Securities Act
5-45 (Article 581-3, Vernon's Texas Civil Statutes).

5-46 SECTION 11. The change in law made by this Act to Section
5-47 35, The Securities Act (Article 581-35, Vernon's Texas Civil
5-48 Statutes), does not entitle a person to a refund of a registration
5-49 or other fee paid by the person before the effective date of this
5-50 Act.

5-51 SECTION 12. This Act takes effect September 1, 2019.

5-52 * * * * *